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No. 93-1636

In The  
**Supreme Court of the United States**  
October Term, 1993

TOM SWINT, et al.,

*Petitioners,*

v.

CHAMBERS COUNTY COMMISSION, et al.,

*Respondents.*

On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit

**PETITIONERS' REPLY MEMORANDUM**

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6 pp

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Contrary to the Respondents' portrayal, this is not a case about the proper interpretation of Alabama state law. After examining Alabama law, the Eleventh Circuit held that the State had not assigned the counties any law enforcement authority independent of that exercised by the sheriffs within the borders of a given county. Pet. App. 33a-34a; *Swint v. City of Wadley, Alabama*, 5 F.3d 1435, 1451 (11th Cir. 1993), *on rehearing*, 11 F.3d 1040 (11th Cir. 1994). The dispute here is not over the Eleventh Circuit's construction of state law, but over whether that construction automatically removes counties from any liability for the actions of sheriffs under § 1983. The Eleventh Circuit held that it does. *Id.* However, as noted

in the petition, pp. 6-13, this Court and at least three other courts of appeals have reached contrary conclusions although the relevant principles of state law were identical in those cases to the principles in Alabama. Indeed, the reasoning of the Eleventh Circuit in this case could be applied to most states, if not all, creating a situation where counties are never liable to citizens under § 1983 for constitutional injuries occurring in the realm of law enforcement.

The crux of the Respondents' characterization of this as a state law dispute is contained at pp. 7-8 of their brief, where they contend that the Eleventh Circuit's holding was based on unique or particular features of Alabama law. First, they cite the Eleventh Circuit's statement that Alabama sheriffs are considered state officials under state law. Yet the Eleventh Circuit specifically held that this point was not controlling. Pet. App. 32a-33a; 5 F.3d at 1450. (If the point were controlling, the Eleventh Circuit would be in conflict with the Fifth Circuit's decision in *Crane v. Texas*, 766 F.2d 193, 195 (5th Cir.), cert. denied, 474 U.S. 1020 (1985), as mentioned at p. 12 of the petition for certiorari).<sup>1</sup> Second, they cite the Eleventh Circuit's statement that "Alabama counties are 'authorized to do only those things permitted or directed by the legislature.' "

<sup>1</sup> Justice O'Connor's plurality opinion in *St. Louis v. Prapotnik*, 485 U.S. 112, 126 (1988), stated: "If . . . a city's lawful policymakers could insulate the government from liability simply by delegating their policymaking authority to others, § 1983 could not serve its useful purpose." Similarly, if states could insulate their counties from liability simply by labeling sheriffs and others who operate on the local level as "state officials," § 1983 would easily be thwarted.

Pet. App. 33a, 5 F.3d at 1451 (citation omitted). However, this is no different from the principle in most states, if not all. Counties are creatures of the states and in most states are limited to those powers permitted by state law. See, Sands & Libonati, *Local Government Law*, §§ 3.01, 8.01. Thus, the Eleventh Circuit's holding is not grounded upon anything that is unique or particular about Alabama law.<sup>2</sup>

Indeed, as explained at pp. 7-13 of the petition, with respect to the principles of state law that this Court and most of the courts of appeals have deemed to be relevant in determining § 1983 liability, Alabama is no different than the other states at issue in the conflicting cases. It is not as if in Ohio, Texas, Arkansas, Massachusetts, and Arizona (which are the states involved in the conflicting cases discussed in the petition), county commissioners ride with the sheriff in the patrol car, or supervise the sheriff's law enforcement actions, or have carte blanche under state law to rewrite the state's criminal code. Counties in those states have no more law enforcement power than do counties in Alabama. As with the sheriffs in Alabama, sheriffs in those states are elected by the

<sup>2</sup> The Respondents also contend at p. 9 of their brief that "Alabama sheriffs and their deputies, as state officers, are immune from suit in both state and federal court." The Eleventh Circuit never relied upon this in its holding. Moreover, as is clear from the cases cited by the respondents, Alabama sheriffs are immune in their *official* capacity as officers of the state, just as the state is immune, but not in their *individual* capacity. Moreover, as the Eleventh Circuit noted in this case, the question of county liability is not grounded upon the characterization of the sheriff as a state official. Pet. App. 32a-33a; 5 F.3d at 1450.



county's voters, exercise law enforcement powers within the county's borders and independent of other county officials, and receive their salary and expenses from county funds.

In the conflicting cases cited in the petition stemming from those states, these principles of state law led the courts to the conclusion that counties could be liable for the actions of sheriffs in the realm of law enforcement. However, the Eleventh Circuit held there can be no county liability in that realm even though the principles of state law are the same.<sup>3</sup> Thus, this case raises not a question of state law, but a question of when county liability exists under § 1983 in the realm of law enforcement and when it does not.

Because the relevant principles in Alabama are the same as in most, if not all, other states, the reasoning of

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<sup>3</sup> As noted at p. 11 of the Respondents' brief, the Seventh Circuit appears to take the same position as the Eleventh on this issue. *See, Soderbeck v. Burnett County*, 821 F.2d 446, 451 (7th Cir. 1987). However, the Respondents are incorrect to suggest that the Tenth Circuit also takes the same position. In the case cited by the respondents, *Meade v. Grubbs*, 841 F.2d 1512, 1528 (10th Cir. 1988), the Tenth Circuit dealt only with whether the County Commissioners had direct supervisory duties with respect to deputy sheriffs, but did not address whether the county was liable for the actions of the sheriff as a final county policymaker. Finally, the Respondents are incorrect at p. 11 in their characterization of the the Eleventh Circuit's decision involving Florida sheriffs, *Lucas v. O'Loughlin*, 831 F.2d 232, 234-35 (11th Cir. 1987), *cert. denied*, 485 U.S. 1035 (1988). The Eleventh Circuit did not hold that sheriffs are final policymakers in Florida with respect to law enforcement, but held only that they are final policymakers with respect to hiring and firing deputies.

the Eleventh Circuit's decision could easily be transported to other states, with the result that counties might never be liable, under any circumstances, for constitutional injuries to citizens. This is a case that is appropriate for this Court's review by way of a writ of certiorari.

Respectfully submitted,

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